Office Supreme Court, U.S.
FILED
AUG 1 1957
JOHN T. FEY, Clerk

No. 244

In the Supreme Court of the United States

OCTOBER TERM, 1957

C. ED HACKENDORF, D/B/A SUN BEARING SUPPLY,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
CHARLES K. RICE,
Assistant Attorney General,
JOHN N. STULL,
ROBERT N. ANDERSON,
FRED E. YOUNGMAN,
Attorneys,
Department of Justice,
Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and other authorities involved	2
Statement	3
Argument	7
Conclusion	12
Appendix	13

CITATIONS

Cases:

Broad Motors Co. v. Smith, 86 F. Supp. 4	7, 8
Clawson & Bals v. Harrison, 108 F. 2d 991, certiorari denied, 309 U.S. 685	7, 9
Clawson & Bals v. United States, 182 F. 2d 402	7, 9
Hartley v. United States, decided October 29, 1956 (S.D. Tex.)	7
Henricksen v. Seward, 135 F. 2d 986	12
Indian Motorcycle Co. v. United States, 283 U.S. 570	10
Monteith Bros. Co. v. United States, 142 F. 2d 139	7
Niagara Motors Corp. v. McGowan, 45 F. Supp. 346	8
Peony Park v. O'Malley, 223 F. 2d 668, certiorari denied, 350 U.S. 845, rehearing denied, 350 U.S. 898	12
Replacement Unit Co. v. United States, decided December 17, 1941 (N.D. Ohio)	8
Tide Water Oil Co. v. United States, 171 U.S. 210	11
United States v. Armature Exchange, 116 F. 2d 969, certiorari denied, 313 U.S. 573	7, 11
United States v. Armature Rewinding Co., 124 F. 2d 589	7
United States v. J. Leslie Morris Co., 124 F. 2d 371	7
United States v. Moroloy Bearing Service, 124 F. 2d 373	7
Wilson v. Simpson, 9 How. 108	11

Statutes:

	Page
Excise Tax Reduction Act of 1954, c. 126, 68 Stat. 37, Sec. 601(a) (26 U.S.C. Appendix 1952 ed., Supp. IV, Sec. 3403)	15
Internal Revenue Code of 1939:	
Sec. 3403(a) (26 U.S.C. 1952 ed., Sec. 3403(a))	15
Sec. 3403(b) (26 U.S.C. 1952 ed., Sec. 3403(b))	13
Sec. 3403(c) (26 U.S.C. 1952 ed., Sec. 3403(c))	7, 8, 14
Internal Revenue Code of 1954:	
Sec. 4061(a) (26 U.S.C. 1952 ed., Supp. IV, Sec. 4061(a))	15
Sec. 4061(b) (26 U.S.C. 1952 ed., Supp. IV, Sec. 4061(b))	7, 16
Sec. 4062(b) (26 U.S.C. 1952 ed., Supp. IV, Sec. 4062(b))	8

Miscellaneous:

Rev. Rul. 54-329, 1954-2 Cum. Bull. 405	7, 9, 18
Rev. Rul. 56-189, 1956-1 Cum. Bull. 503	12, 22
S. Rep. No. 781, 82d Cong., 1st Sess., p. 99 (1951-2 Cum. Bull. 458, 529)	8, 23
Treasury Regulations 46:	
Sec. 316.4	7, 9, 16
Sec. 316.55	7, 17

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 244

C. ED HACKENDORF, D/B/A SUN BEARING SUPPLY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 19-24) is reported at 243 F. 2d 760. The District Court did not render an opinion. Its findings of fact and conclusions of law. (R. 29-32)[1] are not reported.

JURISDICTION

The judgment of the Court of Appeals was entered April 5, 1957. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

---

[1] Record references herein are to the printed record filed in the Court of Appeals.

QUESTION PRESENTED

The taxpayer is engaged in the business of rebuilding automobile engines and selling them at wholesale to jobbers and others. In the course of his rebuilding operation he acquires old engines which have ceased to function efficiently; these engines are completely dismantled; the most important of the salvaged components are machined to make them usable; these components are then used with other salvaged components and newly-purchased tax-paid components in the production of rebuilt motors on an assembly line basis. The question presented is whether the District Court and the court below erred in holding that, in the circumstances of the case, the taxpayer's sale of an automobile engine completely rebuilt in this manner is the sale of an automobile part within the meaning of Section 3403(c) of the Internal Revenue Code of 1939 and Section 4061(b) of the Internal Revenue Code of 1954, so as to require the imposition of the manufacturer's excise tax upon the sale price (with appropriate credits for any taxes paid by the taxpayer on any newly purchased components used in the rebuilt engines).

STATUTES AND OTHER AUTHORITIES INVOLVED

The following pertinent statutory provisions and other authorities involved are printed in the Appendix, *infra*, pp. 13-24:

Internal Revenue Code of 1939, Sec. 3403(a), (b) and (c)

Excise Tax Reduction Act of 1954, Sec. 601(a)

Internal Revenue Code of 1954, Sec. 4061(a) and (b)

Treasury Regulations 46 (1940 ed.), Secs. 316.4 and 316.55
Rev. Rul. 54-329
Rev. Rul. 56-189
S. Rep. No. 781, 82d Cong., 1st Sess.

STATEMENT

This suit was brought to recover amounts alleged to have been erroneously or illegally collected from the taxpayer as manufacturer's excise tax under Section 3403(c) of the Internal Revenue Code of 1939 and Section 4061(b) of the Internal Revenue Code of 1954 for each of the months of November 1952 to and including March 1955 in the aggregate amount of $8,157.66. (R. 1-6.)

The taxpayer states that the material facts are not in dispute (Pet. 8), but does not state in full what the facts are. Since the correctness of the judgments below depends upon the facts of this particular case, they are here restated substantially as found by the District Court (R. 29-32.)

Taxpayer is and has been the sole proprietor of an unincorporated business known as Sun Bearing Supply (hereinafter "Sun"), whose principal place of business is located in Tulsa, Oklahoma. Since 1947 Sun has been engaged in the business of rebuilding automobile engines (or motors) and selling them at wholesale to jobbers and others. (R. 29.)

An automobile engine is a single functional unit, and both new and rebuilt engines are regularly sold as a single assembled unit for installation as replacements in a motor vehicle. The largest and most costly component of an automobile engine is the block, a casting containing the cylinders and, in some models, the ports

in which the valves are seated. All other components of the engine fit into or are attached to the block. The other principal components of the engine are the crankshaft, the pistons (one for each cylinder), the connecting rods (one for each piston), the camshaft, the valves (two for each cylinder), and the crankshaft, camshaft and connecting rod bearings. (R. 29.)

To produce its rebuilt engines, Sun uses newly manufactured parts that it has purchased tax-paid and other parts that it has salvaged from old engines owned by it. Sun acquires some of these old engines by purchase from automobile salvage companies, but acquires most of its old engines by giving a trade-in allowance or credit against the purchase price of its rebuilt engines if its wholesale customer turns in an old engine capable of being rebuilt. The old engines acquired by Sun are engines that, because of wear or for other reasons, have ceased to function efficiently or have ceased to function at all. Sun completely disassembles the old engines acquired by it, cleans and degreases the various components, and then inspects those components to determine which are salvageable. Since Sun uses new pistons, new bearings, and timing chains in its rebuilt engines, those components of the old engines are invariably discarded. In addition, the condition of any one or more of the other components of the old engines may be such as to require discard. (R. 29-30.)

Salvageable blocks, crankshafts, valves, and, in most instances, connecting rods obtained by Sun from old engines are machined or rebuilt by Sun with specialized equipment to make them useable, as follows: The blocks are bored to give the cylinders a uniform size, the valve ports are refaced or reseated, and any cracks in the

block are cold welded. The crankshaft bearing surfaces are reground. Connecting rods for most of the rebuilt engines produced by Sun are reground. Valves are refaced. Other components of the engine, if salvageable at all, do not require machining before use. (R. 30.)

The parts salvaged by Sun from its old engines and the new parts purchased tax-paid by Sun are placed in separate storage bins according to type. Sun then produces rebuilt engines on an assembly line utilizing salvaged parts and newly manufactured parts. Salvaged parts do not customarily go back into the engine block from which they may have originated. With the exception of the camshaft, and in some model engines the connecting rods, every major component of Sun's rebuilt engines is either a newly manufactured part that has been purchased tax-paid by Sun or is a salvaged part that Sun has machined in order to make useable. (R. 30.)

The rebuilt engines produced by Sun are a new and different article from the old engines which it has used as a source of salvageable parts. (R. 31.)

Taxpayer filed manufacturer's excise tax returns for the taxable periods involved, paying taxes computed on the basis of the sale price of his rebuilt engines, and taking an appropriate credit for taxes paid on any newly manufactured parts that had been purchased and used in the rebuilt engines. The ground for recovery asserted in the refund claims on which this suit was based was that an automobile engine is not a taxable "part" within the meaning of the applicable statute because the components of the engine constituted taxable "parts" in themselves and their assembly into a larger unit, the engine, did not create

another and different taxable article. These refund claims asserted that the excise tax should not be computed on the basis of the sale price of the rebuilt engine with credit for newly manufactured tax-paid parts, but should be computed on the basis of the "sales price" of those components of the engine that had been machined by the taxpayer. Each claim for refund contained a schedule purporting to show the "sales price" of the machined components. For example, on these schedules, it was claimed that a rebuilt Plymouth engine should be taxed on the basis of a sale price of $15.60, although the taxpayer sells a rebuilt Plymouth engine for $114.50 if an old engine is turned in by the customer, and charges an additional $35 if an old engine is not turned in. (R. 31.)

On the basis of the foregoing findings, the District Court concluded that the sale of a completely assembled automobile engine is the sale of an automobile "part" within the meaning of the applicable statutes; that the rebuilding of automobile engines by the taxpayer from newly manufactured parts and from salvaged parts, the most important of which are machined to make them useable, constitutes manufacture and the taxpayer is a manufacturer of automobile engines within the meaning of the applicable statutes; and that the manufacturer's excise tax is therefore payable on the sale price of these manufactured articles with appropriate credits against the tax so computed for any taxes paid on newly manufactured components contained in the rebuilt engines. (R. 32.)

The Court of Appeals unanimously affirmed the District Court's judgment. (Pet. 19-24.)

ARGUMENT

The concurrent decisions of the District Court and the Court of Appeals are clearly correct. The case turns upon its particular facts. There is no conflict, and no occasion for further review.

1. In his refund claims and in the court below, although conceding his tax liability on the value of the salvaged parts machined by him, the taxpayer took the position that the rebuilt automobile engines sold by him were not automobile "parts", and also that he was not a "manufacturer" within the meaning of the statutes.[2] (R. 31-32.) Both contentions were rejected. (R. 32; Pet. 19-24.)

From the questions posed by the petition (Pet. 2-3), and the reasons urged for granting the writ (Pet. 10-16), it appears that the taxpayer is no longer contending, at least not directly, that rebuilt automobile engines are not automobile "parts" within the meaning of the statutes,[3] thus presenting only the question

---

[2] Internal Revenue Code of 1939, Section 3403(c); Internal Revenue Code of 1954, Section 4061(b); Treasury Regulations 46 (1940 ed.), Sections 316.4 and 316.55; Rev. Rul. 54-329. (Appendix, *infra*, pp. 14-15, 16-22.)

[3] That a completely assembled rebuilt automobile engine, when sold separately as a replacement, is an automobile "part", and a most important part at that, within the meaning of the statutes, seems clear both in reason and by judicial determination. In addition to the decisions below, see *Broad Motors Co.* v. *Smith*, 86 F. Supp. 4 (E.D. Pa.); *Hartley* v. *United States* (S.D. Tex.), decided October 29, 1956, 1956 C.C.H., par. 10,064, now pending on appeal in the Fifth Circuit. And compare *Clawson & Bals* v. *Harrison*, 108 F. 2d 991 (C.A. 7th), certiorari denied, 309 U.S. 685; *Monteith Bros. Co.* v. *United States*, 142 F. 2d 139 (C.A. 7th); *Clawson & Bals* v. *United States*, 182 F. 2d 402 (C.A. 7th); *United States* v. *Armature Rewinding Co.*, 124 F. 2d 589 (C.A. 8th); *United States* v. *Armature Exchange*, 116 F. 2d 969 (C.A. 9th), certiorari denied, 313 U.S. 573; *United States* v. *J. Leslie Morris Co.*, 124 F. 2d 371 (C.A. 9th); *United States* v. *Moroloy Bearing Serv-*

whether he was a "manufacturer" of the rebuilt engines which he sold and on which he paid the tax.[4] More specifically, since the taxpayer continues to concede his tax liability on the value of the salvaged parts machined by him (Pet. 8), it is apparently the taxpayer's contention that he should not be deemed a "manufacturer" with respect to the other operations involved in the rebuilding process.

The taxpayer states that during the period involved he merely "was engaged in the business of reworking second hand automobile motors"; that his "reworking operations consisted of disassembling, cleaning and re-

---

ice, 124 F. 2d 373 (C.A. 9th); *Niagara Motors Corp.* v. *McGowan*, 45 F. Supp. 346 (W.D. N.Y.); *Replacement Unit Co.* v. *United States* (N.D. Ohio), decided December 17, 1941 (30 A.F.T.R. 1523).

[4] The taxpayer apparently seeks to inject a further question, not raised in his refund claims (R. 133) or in his complaint (R. 1-6), as to whether he should also be given a tax credit under Section 3443(a)(1) of the 1939 Code with respect to salvaged parts used in his rebuilt engines which did not require machining, suggesting this as one of the reasons for granting the writ because the Commissioner has promulgated no regulations "spelling out rules to determine the tax in these circumstances" (Pet. 14-15). Presumably such salvaged parts never were taxed separately, but were component parts of a complete engine which originally had been sold as a unit or of an engine in an automobile which originally had been sold as a unit. The statute makes no provision for a tax credit in such a situation. All Section 3403(c) of the 1939 Code and Section 4062(b) of the 1954 Code provide is that in determining the sale price of a rebuilt automobile part or accessory on which the tax is computed there shall be excluded from the price the value of a like part or accessory accepted in exchange. (See S. Rep. No. 781; 82d Cong., 1st Sess., p. 93, Appendix, *infra*, pp. 23-24.) Furthermore, if the taxpayer should be entitled to a tax credit with respect to such salvaged parts, it would seem that he also should be entitled to a similar tax credit with respect to salvaged parts machined by him. Compare *Broad Motors Co.* v. *Smith*, 86 F. Supp. 4 (E.D. Pa.). Yet in claiming and suing for refund the taxpayer admits liability for tax with respect to those salvaged parts (R. 4-5; Pet. 8).

assembling the old motor"; and that in the "reassembling process" the taxpayer "replaced the completely worn out parts with new tax paid parts, and himself machining the partially injured parts." (Pet. 8.) On the basis of this statement—completely at variance with the District Court's findings—taxpayer here seeks a ruling that he was simply engaged in repairing or assembling automobile engines.[5] But the taxpayer's operations as detailed in the District Court's findings (R. 29-32) are not susceptible of any such characterization. See Treasury Regulations 46 (1940 ed.), Sec. 316.4, and Rev. Rul. 54-329 (Appendix, *infra*, pp. 16-17, 18-22); *Clawson & Bals* v. *Harrison*, 108 F. 2d 991, 994 (C.A. 7th), certiorari denied, 309 U.S. 685; *Clawson & Bals* v. *United States*, 182 F. 2d 402, 405 (C.A. 7th).

The taxpayer was not engaged in repairing automobile engines for the owners. He was engaged in building automobile engines for sale at wholesale by combining salvaged parts from old automobile engines acquired by him for that purpose with new parts acquired by purchase. With a rebored block salvaged from an old automobile engine—which he had himself rebored and machined to make it useable—as the principal component, and by combining used parts salvaged from old automobile engines—some of which also had been reworked by him to make them useable and none of which could be identified as having been salvaged from the same engine—with the new parts purchased by him, the taxpayer produced a completely assembled and

[5] The taxpayer repeatedly attempts to impute to the Government various concessions in this connection (e.g., Pet. 2, 3, 9). Each of these alleged concessions either is inaccurately stated by the taxpayer or was in fact never made.

useable automobile engine. The end product was not simply a repaired automobile engine or a second hand automobile engine, as those terms are generally understood, but was an entirely new engine in every respect except that it was built around a salvaged and reconditioned block with salvaged and reconditioned parts as well as new parts, and was sold to the wholesale trade as a replacement for a worn out or unserviceable automobile engine. This entire process—and not merely his machining operations—clearly constitutes "manufacture" within the meaning of the applicable statutes, departmental rulings, and decisions cited above, and the District Court and the Court of Appeals did not err in so holding.

2. The courts below also did not err in holding that the taxpayer's "ultimate product" was in effect a new motor manufactured by the taxpayer, and in so holding it did not decide any issue contrary to the decisions of this Court cited by counsel. (Pet. 11-12.)

In the first place, as we have pointed out, taxpayer's ultimate product was not an "assembled second hand motor" as the petition refers to it. (Pet. 12.) The District Court found, and its finding is fully supported by the evidence, that "The rebuilt engines produced by Sun are a new and different article from the old engines which it has used as a source of salvageable parts." (R. 31.) The taxpayer was not reselling second hand automobile engines. He was selling automobile engines which he had built. "The finished product was sold at a fixed price for each model and the taxpayer gave a new motor warranty to the purchaser." (Pet. 21.) It was not a second sale of a taxed part, but a first sale by the manufacturer thereof. Hence, there is no conflict with the decision in *Indian Motorcycle Co.* v.

United States, 283 U.S. 570, as asserted by counsel. (Pet. 11.)

Likewise, *Wilson* v. *Simpson*, 9 How. 108, and *Tide Water Oil Co.* v. *United States*, 171 U.S. 210, cited by taxpayer (Pet. 11), are not in point. *Wilson* v. *Simpson* is a patent case involving the question of what repairs may be made by a purchaser of a patented article without constituting infringement. If it can be considered in any way applicable to the facts of this case, it is more in harmony with the decision below than otherwise, because it clearly demonstrates that the taxpayer's operations did not constitute "repairing" automobile engines as the term was there used. Nor was the taxpayer merely assembling parts into a useable article for which they had been specifically ordered and prefabricated as in the *Tide Water Oil Co.* case, *supra*, a customs case dealing with a statute referring to "wholly manufactured" articles.

Taxpayer's claim (Pet. 10-11) of conflict with the decision in *United States* v. *Armature Exchange*, 116 F. 2d 969 (C.A. 9th), certiorari denied, 313 U.S. 573, is also without substance. In that case, burned and worn out armatures were acquired, stripped to the core, and by means of various machine and hand operations, through the use of the old core and new material, turned out for the general market as rebuilt armatures. The Court of Appeals held the process to be manufacturing within the meaning of the statute. In the instant case, the court below, relying on the *Armature Exchange* decision and a number of other similar decisions, properly held (Pet. 23) that "There is no material difference in the rebuilding of armatures, generators, and connecting rods, and in rebuilding motors." Contrary to taxpayer's assertion that the

court below fell "into the error of flagrant discrimination with regard to the motor" (Pet. 13); its decision is in complete harmony with the many decisions of the other Courts of Appeals dealing with other types of rebuilt automobile parts.[6]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
CHARLES K. RICE,
Assistant Attorney General.
JOHN N. STULL,
ROBERT N. ANDERSON,
FRED E. YOUNGMAN,
Attorneys.

AUGUST 1957.

---

[6] See note 3, *supra*.

The administrative rulings cited by the taxpayer (Pet. 13, 25-30) do not apply to the situation involved in this case. In any event, in Rev. Rul. 56-189 (Appendix, *infra*, pp. 22-23), the Internal Revenue Service expressly disavowed, as unsound, the rulings relied upon, and it is well established that the Commissioner and the courts are not bound, in one taxpayer's case, to perpetuate mistakes the Commissioner has made in the treatment of other taxpayers (*Peony Park* v. *O'Malley*, 223 F. 2d 68, 673 (C. A. 8th), certiorari denied, 350 U. S. 845, rehearing denied, 350 U. S. 898), for a taxpayer does not acquire a vested right in a mistake made by the Commissioner in the exercise of his quasi judicial functions. Cf. *Henricksen* v. *Seward*, 135 F. 2d 986, 989 (C. A. 9th).

APPENDIX

Internal Revenue Code of 1939:

SEC. 3403. TAX ON AUTOMOBILES, ETC.

There shall be imposed upon the following articles sold by the manufacturer, producer, or importer, a tax equivalent to the following percentages of the price for which so sold:

(a) [As amended by Sec. 544(a), Revenue Act of 1941, c. 412, 55 Stat. 687, and Sec. 481(a), Revenue Act of 1951, c. 521; 65 Stat. 452]: Automobile truck chassis, automobile truck bodies, automobile bus chassis, automobile bus bodies, truck and bus trailer and semitrailer chassis, truck and bus trailer and semitrailer bodies, tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer (including in each of the above cases parts or accessories therefor sold on or in connection therewith or with the sale thereof), 8 per centum, except that on and after April 1, 1954, the rate shall be 5 per centum. A sale of an automobile truck, bus, or truck or bus trailer or semitrailer, shall, for the purposes of this subsection, be considered to be a sale of the chassis and of the body.

(b) [As amended by Sec. 481(b), Revenue Act of 1951, *supra*] *Other Chassis and Bodies, Etc.*— Other automobile chassis and bodies, chassis and bodies for trailers and semitrailers (other than house trailers) suitable for use in connection with passenger automobiles, and motorcycles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof), except tractors, 10 per centum, except that on and

after April 1, 1954, the rate shall be 7 per centum. A sale of an automobile, trailer, or semitrailer shall, for the purposes of this subsection, be considered to be a sale of the chassis and of the body.

(c) [As amended by Sec. 544(b), Revenue Act of 1941, *supra*, Sec. 605(c), Revenue Act of 1950, c. 994, 64 Stat. 906, and Sec. 481(c) and (d); Revenue Act of 1951, *supra*.] Parts or accessories (other than tires and inner tubes and other than radio and television receiving sets) for any of the articles enumerated in subsection (a) or (b), 8 per centum, except that on or after April 1, 1954, the rate shall be 5 per centum. For the purposes of this subsection and subsections (a) and (b), spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in subsection (a) or (b), shall be considered parts or accessories for such articles, whether or not primarily adapted for such use. This subsection shall not apply to chassis or bodies for automobile trucks or other automobiles. Under regulations prescribed by the Commissioner, with the approval of the Secretary, the tax under this subsection shall not apply in the case of sales of parts or accessories by the manufacturer, producer, or importer to a manufacturer or producer of any of the articles enumerated in subsection (a) or (b). If any such parts or accessories are resold by such vendee otherwise than on or in connection with, or with the sale of, an article enumerated in subsection (a) or (b) and manufactured or produced by such vendee, then for the purposes of this section the vendee shall be considered the manufacturer or

producer of the parts or accessories so resold. In determining the sale price of a rebuilt automobile part or accessory there shall be excluded from the price, in accordance with regulations prescribed by the Secretary, the value of a like part or accessory accepted in exchange.

* * * * *

(26 U.S.C. 1952 ed., Sec. 3403.)

Excise Tax Reduction Act of 1954, c. 126, 68 Stat. 37:

SEC. 601. ONE-YEAR EXTENSION OF CERTAIN EXCISE TAX RATES.

(a) *Extension of Rates.*—The following provisions are hereby amended by striking out "April 1, 1954" each place it appears and inserting in lieu thereof "April 1, 1955":

* * * * *

(8) Section 3403 (relating to tax on automobiles, etc.).

* * * * *

(26 U.S.C. Appendix 1952 ed., Supp. IV; Sec. 3403.)

Internal Revenue Code of 1954:

SEC. 4061. IMPOSITION OF TAX.

(a) *Automobiles.*—There is hereby imposed upon the following articles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to the specified percent of the price for which so sold:

* * * * *

(2) Articles taxable at 10 percent except that on and after April 1, 1955, the rate shall be 7 percent—

Automobile chassis and bodies other than those taxable under paragraph (1).

* * * * *

A sale of an automobile, trailer, or semitrailer shall, for the purposes of this paragraph, be considered to be a sale of the chassis and of the body.

(b) *Parts and Accessories.*—There is hereby imposed upon parts or accessories (other than tires and inner tubes and other than automobile radio and television receiving sets) for any of the articles enumerated in subsection (a) sold by the manufacturer, producer, or importer a tax equivalent to 8 percent of the price for which so sold, except that on and after April 1, 1955, the rate shall be 5 percent.

(26 U.S.C. 1952 ed., Supp. IV, Sec. 4061.).

Treasury Regulations 46 (1940 ed.):

Sec. 316.4. *Who is a manufacturer.*—The term "manufacturer" includes a person who produces a taxable article from scrap, salvage, or junk material, as well as from new or raw material, (1) by processing, manipulating, or changing the form of an article, or (2) by combining or assembling two or more articles.

Under certain circumstances, as where a person manufactures or produces a taxable article for a person who furnishes materials and retains title

thereto, the person for whom the taxable article is manufactured or produced, and not the person who actually manufacturers or produces it, will be considered the manufacturer.

A manufacturer who sells a taxable article in a knockdown condition, but complete as to all component parts, is liable for the tax, and not the person who buys, and assembles a taxable article from, such component parts.

Sec. 316.55. *Definition of parts or accessories.*—The term "parts or accessories" for an automobile truck or other automobile chassis or body, taxable tractor, or motorcycle, includes (a) any article the primary use of which is to improve, repair, replace, or serve as a component part of such vehicle or article, (b) any article designed to be attached to or used in connection with such vehicle or article to add to its utility or ornamentation, and (c) any article the primary use of which is in connection with such vehicle or article whether or not essential to its operation or use.

The term "parts and accessories" shall be understood to embrace all such articles as have reached such a stage of manufacture that they are commonly or commercially known as parts and accessories whether or not fitting operations are required in connection with installation. The term shall not be understood to embrace raw materials used in the manufacture of such articles.

Spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, automobile truck or other automobile chassis, taxable tractors, or motorcycles, are considered

parts of or accessories for such articles whether or not primarily designed or adapted for such use.

Rev. Rul. 54-329, 1954-2 Cum. Bull. 405:

Advice is requested whether persons engaged in rebuilding, reconditioning, or repairing automobile parts and accessories are considered to be the manufacturers or producers of such articles within the meaning of section 3403(c) of the Internal Revenue Code and subject to the tax imposed by that section.

Section 3403(c) of the Code imposes a tax of 8 percent of the price for which parts or accessories (other than tires, inner tubes, and radio or television receiving sets) for any of the articles enumerated in subsection (a) or (b) of section 3403 are sold by the manufacturer, producer, or importer. The terms "manufacturer" and "producer" are not defined in the Code. However, Regulations 46, containing the administrative regulations adopted in clarification of the Code, provide in section 316.4 that the term "manufacturer" includes a person who produces a taxable article from scrap, salvage, or junk material as well as from new or raw material, (1) by processing, manipulating, or changing the form of an article, or (2) by combining or assembling two or more articles.

For the purpose of the ruling made herein, a "manufacturer" is further defined as a person engaged in the production of rebuilt auto parts or accessories for sale or for use in further manufacture of other articles for sale. The term "parts," as used herein, means automobile parts or acces-

sories. The terms "reconditioning," "rebuilding," and "repairing," as used herein, are not used synonymously. Each refers to a separate and distinct operation. While each operation may be performed by a different person, it is likewise true that one person may perform all three operations and the characterization of such person as a "reconditioner," "rebuilder," or "repairer" depends upon the character of the operation he is then engaged in performing. The conclusions of the Internal Revenue Service as to what is comprised within each operation and the taxable consequences thereof are as follows:

(1) *Reconditioning.*—The mere disassembling, cleaning, and reassembling (with any necessary replacements of worn parts with taxpaid parts) of used automobile fuel pumps, water pumps, carburetors, distributors, shock absorbers, windshield-wiper motors, brake shoes, clutch disks, voltage regulators, etc., are regarded as reconditioning operations distinct from the manufacture or production of rebuilt articles. The sale or use of such reconditioned parts is not taxable, regardless of who performs the reconditioning operations. However, any new taxable parts produced or purchased tax free for use in further manufacture, but used as replacements in reconditioning such units, are subject to the tax when used by the reconditioner.

(2) *Rebuilding.*—Reboring or other machining, rewinding, and comparable major operations performed on used parts being processed for sale or for use as components of other ar-

ticles for sale are defined as rebuilding operations constituting manufacture for purposes of the tax. The person owning parts being rebuilt for such disposition is the rebuilder (manufacturer) and is liable for the tax on his sales of the rebuilt parts or on their use as components of other articles manufactured by him for sale. The tax applies whether the machining, etc., operations are performed by the rebuilder himself or by some other person in his behalf.

The manufacturers' excise tax applies to the rebuilder's sale of (a) rebuilt batteries, (b) rebabbitted or machined connecting rods, (c) resurfaced clutch plates, (d) rewound armatures, (e) reground or remetalized crankshafts, (f) engines in which blocks are machined (e.g., cylinders rebored, new sleeves inserted, with or without cylinders being rebored) or new blocks installed, and (g) similar parts on which machining, rewinding, or comparable operations are performed.

The tax due upon the sale of a rebuilt part is based upon the price for which such part is sold, excluding the value of a like part accepted in exchange. The tax due on the use of a rebuilt part as a component of another article manufactured by the rebuilder for sale is based upon the price for which such or similar rebuilt parts are sold in the ordinary course of trade, excluding the value of a like part accepted in exchange. Where a taxpaid part is used as a component in the manufacture of the rebuilt part, appropriate relief through refund or credit may be obtained

pursuant to the provisions of section 3443(a)(1) of the Code.

The conclusion of the Service that rebuilding constitutes manufacturing and that the sale of rebuilt parts is subject to manufacturers' excise tax has been sustained by the courts. See *Clawson and Bals, Inc.*, v. *United States*, 182 Fed. (2d) 402, certiorari denied, 340 U.S. 883; *Armature Exchange, Inc.*, v. *United States*, 116 Fed. (2d) 969, certiorari denied, 313 U.S. 573.

(3) *Repairing.*—The restoration of an owner's part to usable condition (but not for purposes of sale or for use as a component of other articles for sale) constitutes a repair operation whether performed by the owner himself or by others acting in his behalf. As manufacturing has been defined as the production of rebuilt articles for sale, a rebuilding operation will under no circumstances be considered a repair, since the purpose of rebuilding as construed above is the restoration of the article for sale. The use by an owner of a repaired part does not give rise to a tax under section 3444 of the Code, since such use by a person who is not construed to be a manufacturer or producer is not considered the kind of use contemplated by that section. Conversely, however, the use by a rebuilder of a rebuilt part will be taxable under such section.

Where a part has been repaired, the repairer must retain in his possession such evidence or documents from which the nontaxable nature of the operation can be readily ascertained. However, if taxpaid parts are used or sold in the

course of a repair operation, no adjustment of the tax thereon will be allowable.

S. T. 927, C. B. 1942-2, 225, and S. T. 932, C. B. 1945, 431, superseded.

S. T. 937, C. B. 1951-1, 151, holds that rebuilders of used automobile engines may, in lieu of using actual values of individual engine blocks accepted in part payment of rebuilt engines sold on an exchange basis, ascribe to blocks of all makes, types, and models so accepted a uniform value of 35 percent of the "exchange price" in the computation of the tax payable under section 3403(c) of the Internal Revenue Code.

Section 481(d) of the Revenue Act of 1951, effective November 1, 1951, added the following sentence to section 3403(c) of the Code:

> In determining the sale price of a rebuilt automobile part or accessory there shall be excluded from the price * * * the value of a like part or accessory accepted in exchange.

In view of the fact that S. T. 937, *supra*, was superseded by the addition of the above-quoted sentence, it is hereby revoked.

Rev. Rul. 56-189, 1956-1 Cum. Bull. 503:

The Internal Revenue Service has reconsidered Revenue Ruling 54-329, C. B. 1954-2, 405, and Revenue Ruling 55-98, C. B. 1955-1, 524, particularly with reference to the taxability of reassembled generators containing armatures rewound by the reassembler and rebuilt clutch assemblies. As a consequence of such reconsideration, the Service

has now concluded that the positions taken in these rulings as applied to reassembled generators and rebuilt clutch assemblies are not sound.

Therefore, it is held that the manufacturers excise tax applies to the rebuilder's sale of a reassembled generator containing an armature rewound by the reassembler, and to a rebuilt clutch assembly. Revenue Ruling 55-98 is revoked and Revenue Ruling 54-529 is modified accordingly.

Because of the reliance which may have been placed on these Revenue Rulings by generator and clutch rebuilders, the instant ruling will not be applied to sales occurring prior to June 1, 1956, except that any tax which may have been paid by generator rebuilders on generators containing armatures rewound by them or by clutch rebuilders will not be refunded.

S. Rep. No. 781, 82d Cong., 1st Sess., p. 99 (1951-2 Cum. Bull. 458, 529):

With respect to reconditioned or rebuilt parts, where such sales are subject to the parts and accessories tax under present law; section 471 of both your committee's bill and section 481 of the House bill provide an amendment which excludes from the tax base the fair market value of any like part traded in for a reconditioned or rebuilt part. Where an automotive part is not performing satisfactorily and the car owner cannot afford a new one, he has the choice of either having the old one reconditioned, usually in a local shop, or of trading in the old part on a similar one which already has been reconditioned. The first of these alternatives,

having the old part reconditioned, is not subject to the tax on automotive parts and accessories since there is no transfer of title. However, this alternative is not widely availed of because the car owner is not able to use his car during the reconditioning period. Under the second alternative, trading in the old part on a similar one which already has been reconditioned, there is a transfer of title and therefore such sales are subject to tax. The amount subject to tax in these cases is the charge to the car owner, plus the fair market value of the part he trades in. This not only presents the difficult administrative problem of determining the fair market value of the old part, but also is inequitable since trading in the old part is a substitute for repairing the car owner's old part. Only the value added in this case could be considered as new manufacturing, since in effect the car owner already owned the portion of the reconditioned part representing the value of the old part. To tax him on the fair market value of the part he turns in is to tax him on something he already owns. The exclusion of the value of the trade-in, as provided by your committee's amendment, removes this inequity. This also removes the difficult administrative problem of determining the fair market value of the old part, since the tax base will be limited to the cash payment required.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1957 — 41433